offerings. This occurs because the carrier using TSR has "all-in" out of pocket long distance access charge costs for intrastate calls of approximately $.06 per minute of use.[32] Moreover, the TSR carrier receives no terminating compensation in the nature of terminating access charges – those fees instead going to the ILEC that resold the local service.

In contrast to the TSR carrier, a competing ILEC (in this case, SBC) never pays access charges for originating long distance calls.[33] Then, with a Texas statewide local dial tone market share in excess of eighty two percent,[34] SBC statistically knows that in at least[35] eighty two out of one hundred instances it will pay no intrastate terminating access charges. Even if SBC does have to pay such charges to its customer's chosen long distance carrier for terminating the call, SBC knows that it will collect these same access charges from that carrier on the terminating end of the call. Thus, the "all-in" out of pocket long distance access charge cost to SBC to provide intrastate long distance service to its customers using bundled services is approximately $0.0054 cents per minute.[36] This amounts to less than one-tenth of the intrastate costs incurred by a similarly situated TSR carrier. SBC also, unlike the TSR carrier, receives terminating access revenues for calls terminating to its local dial tone customer - further increasing its margins.

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[32] In Texas, intrastate originating access charges assessed by SBC are in excess of $0.03 per minute, or about 10 times the cost of interstate access charges. As such, the costs to an interexchange carrier to originate and terminate an intrastate call in Texas approximate $.06 per minute. For purposes of simplicity, we have not calculated the effect of interstate calling, but note that for calls within SBC's 14 state territory the effects noted herein should be the same.

[33] SBC does not allow a Texas customer to choose SBC as its long distance carrier unless SBC is also the local dial tone provider of record.

[34] Public Utility Commission of Texas, *Report to the 78th Texas Legislature, Scope of Competition in Telecommunications Markets of Texas – December 2002 Update* (August 2003).

[35] Actual instances are higher than stated insofar as SBC is not required to pay access charges for TSR lines resold by it because that would amount to SBC paying itself. TSR lines accounted for between one and eight percent of total CLEC lines in Texas, depending on market area. Supra, n.31.

[36] Calculated as follows: Originating Access Cost: $0.00 per minute of use; Terminating Access Cost: 100% less 82% local dial tone statewide market share equals 18%, multiplied by an intrastate rate of $0.03 per minute of use equals $0.0054 cents per minute of use.

As one can readily see from the above analysis, it is simply impossible for a CLEC attempting to use TSR to build a competitive service offering. Such a strategy is wholly uneconomic and can only result in the bankruptcy of any CLEC attempting it.[37] Tragically, this strategy, which has been wholly undermined due to the use of monopoly market power by the ILECs, is directly and explicitly recognized by the 1996 Act as a legitimate competitive method.[38] To say that the purposes of the 1996 Act have been frustrated in this regard is a gross understatement.

C. UNE-P Has Emerged As An Effective Market Entry Strategy

In contrast to the problems incurred with respect to TSR, a UNE-P strategy allows a CLEC to compete in an effective way with the ILEC. This is because UNE-P puts the CLEC in almost the same position with respect to long distance access charges as that enjoyed by the ILEC. We say "almost the same position" because the ILEC continues to have the market power advantage of not having to pay access charges to itself; which results in the ILEC's avoidance of all long distance access charges in those instances where it is the local dial tone provider on both ends of the call. As noted above, with respect to SBC in Texas, this amounts to the avoidance of about eighty-two percent of all intrastate access charges. Notwithstanding this fact, CLECs employing a UNE-P market strategy are able to avoid originating long distance access charges and can charge terminating access charges in the same manner as the ILEC. Thus, CLECs are on a much more equal footing with the ILEC than is the case using a TSR strategy.

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[37] In the past 12 months alone, NTS has lost approximately 34% of its TSR customer base (these are customers outside of NTS's facilities-based markets). This loss is the result of SBC's use of its market power to offer rates to retail long distance customers below NTS's actual costs to provide similar service. During this same period, the number of NTS's facilities-based lines has grown significantly.

[38] 47 U.S.C. §§ 251(b)(1), 251(c)(4), 252(d)(3), and 271(c)(B)(xiv).

D. Continue To Allow Use of UNE-P – But Limit Its Use To Market Entry

Understanding the Commission's preference for facilities-based competition, it has been widely predicted that the Commission may well dismantle UNE-P as a competitive mechanism. This would be a mistake at least insofar as UNE-P is used merely as a market entry strategy. An appropriate course of action with respect to UNE-P should balance the need for facilities-based competition with the need for CLECs to have an effective mechanism to enter a market in a reasonably cost effective manner. UNE-P remains necessary to "jump start" competition in markets. NTS suggests that the Commission allow UNE-P, but limit its use to market entry alone.

Accordingly, NTS proposes that the Commission allow CLECs to use the UNE-P mechanism to compete for market share until such time as a CLEC has acquired approximately 500 local dial tone lines within a given ILEC end office.[39] Upon reaching this threshold, the CLEC would then be required to commence the construction of collocation facilities and deploy therein such end office equipment as is required to provide service to all of its customers served via the end office in question. Interoffice or other interconnection transport facilities would be required to be leased as a UNE from the ILEC or a third party and appropriate interconnection trunks would need to be arranged in cooperation with the ILEC. Moreover, the CLEC would be required to arrange for switching using it own switch(es) or those of a non-ILEC third party.

When all necessary owned and/or leased CLEC facilities are in place, the CLEC would then be required to order from the ILEC the conversion of all UNE-P customers to the CLEC's newly established facilities using established "cut-over" procedures. Assuming active ILEC

[39] This number of lines is based on NTS's internal analysis of when it becomes possible (under current rules and rates) for a facilities-based CLEC to recoup the capital costs of deployed equipment and collocation payments to the ILEC in approximately fifty-four months. For a detailed breakdown of this analysis see the attached Exhibit "B" (filed under seal pursuant to the Commission's Protective Order issued in this proceeding).

cooperation is assured by Commission rule, final "cut-over" of all customers in an end office could be required within one-hundred sixty days from completion of collocation facilities. After such date, the CLEC would no longer have the right to provision customers out of the end office in question using the UNE-P mechanism.

NTS believes that the foregoing proposal strikes an important and appropriate balance between the competing interests involved. It encourages CLECs to enter new markets, while at the same time allowing them to do so without huge and incredibly risky upfront investments of capital. It also removes UNE-P as a long term issue for the ILEC community. Most important, it requires the deployment of new facilities by CLECs, and further, should aid in the development of new wholesale markets from which CLECs can purchase network elements. Thus, NTS would encourage the Commission to adopt rules implementing the above proposal.

V. GRANULAR INFORMATION CONCERNING NTS'S FACILITIES-BASED MARKETS

A. Large Markets - Amarillo and Lubbock, Texas

These two markets consist of approximately 145,000 access lines each. The number of SBC end offices and the corresponding NTS network architecture is somewhat different in each market, depending on market specific geographic characteristics.

NTS has deployed a Lucent 5ESS switching platform in each market to serve the voice needs of its customers. The Amarillo switch is engineered to accommodate approximately 15,000 lines and the Lubbock switch is designed to provide service to roughly 40,000 lines.

In Amarillo, NTS is physically collocated in the SBC Drake, Fleetwood, Evergreen, and Diamond end offices. The NTS Amarillo switch interfaces with the Amarillo SBC network utilizing NTS constructed and owned fiber optic facilities. Interconnection for the exchange of local traffic, network signaling and the like occurs via end office trunking at each SBC end

office. Interoffice transmission between the NTS POP and the Evergreen and Diamond end offices is accomplished using hi-capacity DS-3 interoffice facilities. Interconnection between the Drake and Fleetwood offices is accomplished using SBC dark fiber provided as a UNE and made into an OC-48 collapsed ring architecture using NTS electronics. NTS estimates that these dark fiber facilities, if they had to be constructed, would cost NTS approximately $506,079 to replicate.[40] Alternatively, under an OC-N tariff pricing scenario, this capacity would cost approximately $20,000 per month.[41] Under our existing interconnection agreement utilizing TELRIC pricing, this dark fiber facility costs NTS approximately $500.00 per month to lease.[42]

In Lubbock, Texas, NTS is physically collocated in the SBC Porter-Sherwood, Swift, Frankford, and Parkview end offices. The NTS Lubbock switch interfaces with the SBC network via fiber facilities constructed between NTS's Lubbock POP and the SBC Porter Sherwood end office. Interoffice transmission between the SBC Porter Sherwood office to the Swift, Frankford and Parkview end offices is accomplished using SBC UNE dark fiber facilities. The link between the Parkview end office and NTS's Lubbock POP (which completes the SONET OC-48 ring architecture) is leased from a third party. Interconnection for the exchange of local traffic, network signaling and the like occurs via end office trunking at each SBC end office.

NTS estimates that the Lubbock dark fiber facilities leased as UNEs from SBC, if they had to be constructed, would cost NTS approximately $1,518,237 to replicate.[43] Alternatively, under an OC-N tariff pricing scenario, this capacity would cost approximately $60,000 per

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[40] Estimate based on average interoffice mileage between SBC end offices where NTS currently leases dark fiber as a UNE of 42,173 feet and construction costs of $12.00 per foot. These costs do not include deployed electronics.

[41] Estimate based on linear OC-48 capacity purchased from SBC.

[42] Cost is estimated based on TELRIC dark fiber pricing with a reference facility of 42,173 feet in length.

[43] Estimate. *See* n.40, *supra*.

month.[44] Moreover, such a linearly architected tariff replacement would not be able to duplicate the functionality of the ring configuration currently enjoyed by NTS's customers. Under our existing interconnection agreement utilizing TELRIC pricing, these Lubbock dark fiber facilities cost NTS approximately $1,500.00 per month to lease. [45]

Alternative Providers - To NTS's knowledge, there exists one additional switch-based carrier operating in the Lubbock and Amarillo markets. NTS is not entirely aware of this providers' network configuration, but is quite sure that it does not have any end user loops, databases, interoffice facilities, or interconnection facilities that can be shared or leased. SBC is the only available provider capable of delivering the network elements which NTS needs to use in these markets to provide quality dial tone products and advanced telecommunications capabilities to the public.

Intermodal Competitors – To NTS's knowledge, there are at least three mobile wireless providers in these markets. None of these providers offers products comparable to traditional wireline telephone services to business or residential customers - such as DS-1/DS-3 service, PRI service, DID services, hunting services, tie lines, enhanced 911 services, or unlimited local calling within the exchange. Almost all of NTS's business customers and the vast majority of NTS's residential customers consider these functions to be required features. Wireless providers in these markets offer no data options that are comparable to the broadband data services offered by the wireline providers.[46]

The sole incumbent cable television operator in each market offers high-speed internet access, but does not guarantee speeds and does not offer ubiquitous service throughout the

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[44] Estimate. *See* n.41, *supra*.

[45] Estimate. *See* n.42, *supra*.

[46] Typical mobile phone data services are limited to 28Kbs to 128Kbs transfer rates and these data plans are two to three times the cost of wireline options.

exchange. Having originally built its plant to serve primarily residential video customers, it is incapable of offering service to key business districts. The cable operator has no price competition for its video services except from national satellite providers.

B. Medium Sized Markets - Abilene, Midland, Odessa, and Wichita Falls, Texas.

These markets consist of approximately 75,000 access lines each. The number of SBC end offices and the corresponding NTS network architecture is somewhat different in each market, depending on market specific geographic characteristics.

In Abilene, Texas, NTS has deployed a Lucent 5ESS switching platform at NTS's Abilene POP and is physically collocated in the SBC Orchard and Owen end offices. Transmission between the NTS Abilene POP and the SBC Owen office is accomplished using NTS constructed fiber optical facilities. Interconnection for the exchange of local traffic, network signaling, and the like occurs at each SBC end office. Interoffice transmission between the SBC Orchard and Owen offices is accomplished using SBC dark fiber leased as a TELRIC UNE and made into an OC-48 collapsed ring architecture using NTS electronics. NTS estimates that these dark fiber facilities, if they had to be constructed, would cost NTS approximately $506,079 to replicate.[47] Alternatively, under an OC-N tariff pricing scenario, this capacity would cost approximately $20,000 per month.[48] Current TELRIC based dark fiber pricing has allowed NTS to lease these facilities for approximately $500.00 per month.[49]

In Midland and Odessa, Texas, NTS has effectively combined these two separate exchanges, along with the SBC Terminal exchange, to form one larger, more logical, and more economical exchange. NTS performs switching functionality in this newly NTS created "mega-

[47] Estimate. *See* n.40, *supra*.

[48] Estimate. *See* n.41, *supra*.

[49] Estimate. *See* n.42, *supra*.

exchange" via its Lubbock deployed (host) Lucent 5ESS switch. NTS is physically collocated in the SBC Midland Mutual, Midland Oxford, SBC Terminal, Odessa Emerson, and Odessa Lincoln end offices. Each end office is connected back to the Lubbock host switch via diverse intercity long haul facilities at minimal additional cost.[50] Interconnection for the exchange of local traffic, network signaling, and the like occurs at each end office. Interoffice transmission between the SBC Midland, Odessa and Terminal end offices is accomplished using SBC dark fiber leased as a TELRIC UNEs and made into a diverse routed SONET OC-48 ring architecture using NTS electronics. NTS estimates that the dark fiber facilities between each end office in these markets, if they had to be constructed, would cost NTS approximately $2,530,395 to replicate.[51] Alternatively, under an OC-N tariff pricing scenario, this capacity would cost approximately $100,000 per month.[52] Current TELRIC based dark fiber pricing has allowed NTS to lease these facilities for approximately $2,500.00 per month.[53]

In Wichita Falls, Texas, NTS has deployed a Lucent 5ESS switching platform at NTS's Wichita Falls POP and is physically collocated in the SBC Lamar, Call Field, and Tank Farm/Airport end offices. Transmission between the NTS Wichita Falls POP and the SBC Lamar end office is accomplished using NTS constructed OC-48 facilities. Interconnection for the exchange of local traffic, network signaling, and the like occurs at each end office via SONET OC-48 fiber optic facilities. Two of these links (Lamar to Call Field and Call Field to Tank Farm/Airport) are leased as a TELRIC UNEs and "lit" using NTS electronics. The link between Lamar to Call Field was constructed by NTS acting in partnership with several

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[50] Current open market based pricing for intercity long haul facilities is approximately $0.0005 cents per DS-0 mile ($0.336 per DS-3 mile, or $16.128 per OC-48 mile) when purchased at the OC-48 level.

[51] Estimate. *See* n.41, *supra.*

[52] Estimate. *See* n.42, *supra.*

[53] Estimate. *See* n.43, *supra.*

independent local telephone companies. Thus, interoffice transmission between each Wichita Falls end office is accomplished using a combination of SBC dark fiber leased as UNEs and NTS constructed facilities. Each of these facilities are interconnected at each SBC end office and then made into a SONET OC-48 redundant ring architecture. NTS estimates that the Wichita Falls dark fiber facilities currently being leased from SBC as a TELRIC UNE, if they had to be constructed, would cost NTS approximately $1,012,158 to replicate.[54] Alternatively, under an OC-N tariff pricing scenario, this capacity would cost approximately $40,000 per month.[55] Current TELRIC based dark fiber pricing has allowed NTS to lease these facilities for approximately $1,000.00 per month.[56]

Alternative Providers - To NTS's knowledge, there are no other facilities-based carriers operating within any of its medium sized markets.[57] SBC is the only available provider capable of delivering the network elements which NTS needs to use in these markets to provide quality dial tone products and advanced telecommunications capabilities to the public.

Intermodal Competitors – To NTS's knowledge, there are at least three mobile wireless providers in each of the referenced markets. None of these providers offers products comparable to traditional wireline telephone services to business or residential customers - such as DS-1/DS-3 service, PRI service, DID services, tie lines, hunting services, enhanced 911 services, or unlimited local calling within the exchange. Almost all of NTS's business customers and the vast majority of NTS's residential customers consider these functions to be required features.

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[54] Estimate. *See* n.41, *supra.*

[55] Estimate. *See* n.42, *supra.*

[56] Estimate. *See* n.43, *supra.*

[57] In Odessa, Texas, NTS has heard that there is possibly a new cable company beginning to deploy hybrid fiber-coax cable television facilities. Those facilities are not widely deployed today.

Wireless providers in these markets offer no data options that are comparable to the broadband data services offered by the wireline providers.[58]

The incumbent cable television operator in each market does offer high-speed internet access, but does not guarantee speeds and does not offer ubiquitous service throughout the exchange. Having originally built plant to serve primarily residential video customers, NTS understands that these incumbent cable operators are incapable of offering service to the vast majority of businesses due to the geographic placement of outside plant. None of the incumbent cable operators currently have price competition for video services except from national satellite providers – and, as a rule, the satellite providers do not provide local programming.

C. Small Markets – Plainview and Pampa, Texas

The Plainview, Texas market consists of roughly 18,000 access lines. The Pampa, Texas market has approximately 13,000 access lines. Both markets are quite rural, with somewhat developed business districts.[59] A single SBC end office serves each market.

In Plainview, NTS is physically collocated in the SBC Plainview end office. The NTS Lubbock switch serves as a remote switch for the Plainview exchange. Interconnection for the exchange of local traffic, network signaling and the like occurs via end office trunking at the SBC Plainview office. Interoffice transmission between the NTS Lubbock switch and the SBC Plainview office is accomplished using a single strand of SBC dark fiber provided as a UNE and a stand-alone SBC provided DS-3 UNE facility. NTS estimates that the cost to replace these connections, if they had to be constructed, would cost NTS approximately $1,552,320.[60]

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[58] Typical mobile phone data services are limited to 28Kbs to 128Kbs transfer rates and these data plans are two to three times the cost of wireline options.

[59] Plainview is 45 miles from the nearest large metropolitan area (Lubbock). Pampa is 60 miles from the nearest large metropolitan area (Amarillo).

[60] Cost is estimated based on 21,120 feet of intracity construction at $12.00 per foot and 216,480 feet of intercity rural construction at $6.00 per foot.

Alternatively, under an OC-N tariff pricing scenario, this capacity would cost approximately $12,000 per month.[61] Under our existing interconnection agreement utilizing TELRIC pricing, this dark fiber facility costs NTS approximately $2,500.00 per month to lease.[62]

In Pampa, Texas, NTS is physically collocated in the SBC Pampa end office. The NTS Amarillo switch serves as a remote switch for the Pampa exchange. Interconnection for the exchange of local traffic, network signaling and the like occurs via end office trunking at the SBC Pampa office. Interoffice transmission between the NTS Amarillo switch and the SBC Pampa end office is accomplished using stand-alone SBC provided DS-3 UNE facilities. NTS estimates that the price tag to replace these connections, if they had to be constructed, would cost NTS approximately $2,090,880.[63] Alternatively, under an OC-N tariff pricing scenario, this capacity would cost approximately $15,000 per month.[64] Under our existing interconnection agreement utilizing TELRIC pricing, this capacity costs NTS approximately $3,200 per month to lease.

While NTS is desirous of offering competitive video services in these small markets, this will not be possible using currently existing transmission capacity.[65] Additional capacity to markets of this size is simply not available unless it is constructed by NTS, and the costs to do so are prohibitive.

Alternative Providers - There is no other facilities-based competitive choice in either the Pampa or Plainview markets. SBC is the only available provider capable of delivering the

[61] Cost is estimated based on calculations conducted by NTS prior to entry into this market using the current UNE configuration.

[62] Cost is estimated based on TELRIC dark fiber pricing with a reference facility of 237,600 feet in length.

[63] Cost is estimated based on 31,680 feet of intracity construction at $12.00 per foot and 285,120 feet of intercity rural construction at $6.00 per foot.

[64] Cost is estimated based on calculations conducted by NTS prior to entry into this market using the current UNE configuration.

[65] It requires minimum capacity of OC-12 to transport NTS's switched digital IP video services.

network elements which NTS needs to use in these markets to provide quality dial tone products and advanced telecommunications capabilities to the public.

Intermodal Competitors – To NTS's knowledge, there are at least two wireless providers in each of these markets. None of these providers offers products comparable to traditional wireline telephone services to business or residential customers - such as DS-1/DS-3 service, PRI service, DID services, hunting services, tie lines, enhanced 911 services, or unlimited local calling within the exchange. Almost all of NTS's business customers and the vast majority of NTS's residential customers consider these functions to be required features. NTS is not aware of whether or not the incumbent cable television operator in either market offers high-speed internet access. If so, NTS sales personnel have not come across such an offering in their sales efforts.

D. Facts All NTS Facilities-Based Markets Have In Common

Each collocation in NTS's markets contains NTS owned Digital Loop Carriers ("DLC"), Digital Subscriber Line Access Multiplexers ("DSLAM"), appropriate fiber terminals, network monitoring and test equipment, and various peripheral equipment.

At each ILEC end office NTS interconnects its network with SBC UNE two-wire copper loops and four-wire hi-capacity loops to business and residential customers throughout these markets. NTS offers not only basic dial tone, but also services requiring hi-capacity loops such as Primary Rate Interface ("PRI") lines and DS-1 service for both voice and data applications. As the Commission is aware, many (if not most) business customers require PRI or DS-1 lines in order to interface with their office Private Branch Exchanges ("PBX"). Voice features offered to the public include just about everything a Lucent Class 5 switch is capable of providing. NTS also offers enhanced voice mail products. Pricing for NTS voice services is typically fifteen to

twenty percent lower than that offered by the ILEC – substantially aiding the local economies where we deploy our services.

Also, at each end office, NTS interconnects its high-speed Digital Subscriber Line ("DSL") customers to its network via NTS's DSLAMs and associated equipment. NTS offers DSL standard broadband speeds that are as fast as line conditioning and length will allow. These speeds typically range from 600Kbs to in excess of 4Mbs. Significantly, in addition to "plain vanilla" ADSL, SDSL, and IDSL flavors, NTS has also deployed Reach DSL products that carry broadband services to customers up to thirty thousand feet from an end office. SBC offers no comparable service. Once established, DSL bit rates constitute guaranteed speeds to NTS's customers. With the advent of ADSL2+ in the next few months, NTS's data speeds will reach up to 24Mbs and, when they do, NTS plans to offer its existing 200-plus channel IP video programming to customers throughout its markets[66] – providing sorely needed competition to the existing incumbent cable operator. Currently, data services are used by NTS's customers to accomplish a multitude of things including internet access, virtual private networking, peer-to-peer networking, enterprise voice over internet protocol using third party services, and telecommuting. In addition to DSL, NTS also offers 1.5Mbs and 45Mbs bi-directional data service to business customers throughout its facilities-based exchanges using SBC leased hi-capacity loops as UNEs.[67] Each NTS data service rides along the same interoffice facilities, and

[66] With the exception of the Pampa and Plainview markets, where sufficient long haul transport capacity does not exist to accommodate NTS's video services.

[67] The key benefit to customers from this service, apart from bi-directional guaranteed bandwidth, is that it is not distance sensitive from the end office. This enables customers who cannot be reached by DSL services (and possibly cable modem service) to receive the benefits of advanced telecommunications capability.

in the case of ADSL and some DS-1/DS-3 applications, the same loop facilities as those used for voice services.[68]

VI. THE IMPORTANCE OF INTEROFFICE DARK FIBER AS A UNE

Given the tens of millions of capital dollars already invested in its facilities-based markets by NTS and the millions of dollars being regularly paid to SBC for the lease of UNE's in these markets, it is important for the Commission to understand that if NTS is forced to replace its current interoffice TELRIC priced leased dark fiber facilities via either new construction or the lease of SBC OC-N tariff services, this would likely render market continuation financially untenable for NTS. Accordingly, if the Commission wishes to preserve and build upon facilities-based competition, it is imperative that TELRIC priced dark fiber interoffice facilities continue to be made available from the ILEC.

There seems to be a perception among some commentators that there exists a "fiber glut" in this country and that dark fiber facilities are available from a variety of providers to every point imaginable. While this is probably true with respect to long haul, or inter-city routes, it is by no means the case when it comes to connecting ILEC central office collocations together. In NTS's business plan, acting in reliance on rules promulgated by the Commission, the company has interconnected every available collocation utilizing ILEC dark fiber facilities; except in those situations where such facilities have been available for purchase from a third party or where it made sense to construct them itself. No third party offers dark fiber or OC-N connectivity between any of the NTS collocations connected using the dark fiber UNE. Thus, these facilities are only available directly from the ILEC.

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[68] NTS finds this fact potentially significant to the Commission because NTS's current data, voice over data, and future video services are clearly an "advanced telecommunications capability" under the 1996 Act.

The use of dark fiber has enabled NTS to create self-healing SONET and/or Ethernet rings that ensure that NTS's customers receive the same quality of service as that offered by the ILEC. Moreover, the use of dark fiber has enabled NTS to strictly control the quality of services offered to its customers in the same manner that the ILEC can. Without this control, a facilities-based CLEC such as NTS would become much more dependant on the whims of its main competitor to ensure quality of service to its customers. For example, in the event of an outage affecting both ILEC and CLEC customers whose service rides the same fiber facilities, NTS's many years of experience strongly indicate to it that the ILEC would work to repair services to its own customers prior to repairing service for the CLEC. Such a scenario puts the CLEC at an incredible disadvantage in providing quality service to its customers.

Additionally, the use of dark fiber has allowed NTS begin to roll out video and other advanced data services to customers. Such advanced deployments would simply not be possible in the absence of TELRIC priced dark fiber facilities. Duplication of these facilities in NTS's UNE-L Markets would be entirely uneconomic and greatly decrease, or perhaps prevent, our ability to deliver competitive voice, data and video services to the public.[69]

It has been suggested that it may be possible to replicate the functionality of the TELRIC priced dark fiber UNE with ILEC tariff-based special access services. These parties allege that the lack of access to a given TELRIC priced UNE (such as dark fiber between collocations) does not result in a finding of impairment where there is robust competition in a market.[70] The fact is, however, that with respect to dark fiber between NTS's collocations, such facilities are simply not available to be purchased under SBC's access tariffs in any of NTS's UNE-L Markets.

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[69] As noted in Section V of these comments, NTS estimates that it would cost roughly $6,072,948 to replicate these facilities.

[70] *USTA II.*

Moreover, not only is there a lack of robust competition with respect to these facilities, to the best of NTS's knowledge, SBC is the only entity which possesses dark fiber capable of linking NTS's various collocations together. If there was a non-SBC third party option available, the Commission can rest assured that NTS would be purchasing service from that party instead of SBC.

It may also be suggested that OC-N level services purchased under an access tariff are capable of linking collocations together and that this amounts to an acceptable substitute for TELRIC priced dark fiber facilities. This is simply not the case.

First, such a scenario is wholly uneconomic, creating even more barriers to entry than those that already exist. Secondly, such a scenario puts the CLEC in a more dependant relationship with the ILEC than is prudent because there is total reliance on the ILEC to maintain not only the fibers (a minimal task), but also maintain all electronics and almost all cross-connects and connectors. Based on NTS's years of experience, leaving this much control over service critical items in the hands of a CLEC's primary competitor places the CLEC in a situation of facing service interruptions that would not otherwise exist. [71]

Service interruptions using ILEC interoffice transport services are not an idle worry. For example, on September 28, 2004, the ILEC (SBC) which provides hi-capacity interoffice transport between NTS's Amarillo switch and NTS's collocation at the Diamond end office, disabled seven hi-capacity interoffice transport facilities leased by NTS to provide connectivity to our customers. This outage lasted three hours - during which time NTS's customers served

[71] Due to the self-healing ring architecture which NTS has created (where possible) using SBC dark fiber, a fiber cut at any point on the fiber optic ring is not service affecting to any of NTS's customers. On the other hand, when using ILEC provided OC-N service (even with alleged ring OC-N service), a fiber cut in the wrong place, the slightest mistake by an ILEC technician, or ILEC equipment failure, is capable of disrupting service to tens of thousands of the CLEC's customers in one fell swoop. This simply presents too great a risk to a CLEC's customer base.

out of this end office were without local dial tone, data and other advanced services. There were literally hundreds of NTS customers that were without service during the outage.

Finally, the inability to purchase TELRIC priced ILEC interoffice dark fiber frustrates the purposes of the Telecommunications Act. The 1996 Act encourages facilities-based competition and investment in infrastructure (i.e....fiber optic transmission terminals and significant peripheral equipment). Without the dark fiber UNE, there would be no fibers to which such terminals could be utilized.[72]

Facility based CLEC's need access to available ILEC dark fibers running between ILEC central offices at TELRIC pricing. As is the case with the dependency that exists between ILEC last mile loops, collocations, network signaling and the various other essential UNEs, access to these UNEs is meaningless without a reliable and cost effective method to interconnect these facilities back to the CLEC's core switching and data network. Interoffice dark fiber facilities are very rarely available from any third party other than the ILEC. Moreover, special access and or/or direct build proposals are entirely uneconomic solutions creating insurmountable barriers to entry.

VII. THE IMPORTANCE OF HI-CAPACITY LOOPS AND INTEROFFICE TRANSPORT AS A UNE

A. End Loops

NTS utilizes hi-capacity loops (DS-1 and DS-3) UNEs in order to service many customer needs. Specifically, it is an absolute necessity for the vast majority of business customers to interface their PBX equipment with either a PRI (which requires a T-1 UNE loop) or a DS-3. In the facilities-based markets that NTS serves, without access to these UNEs there is simply not an alternative method of providing dial tone on a competitive basis to this customer segment.

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[72] Section 706 of the Act encourages facilities investment to promote "advanced telecommunications capability."

Moreover, these facilities are used by many businesses to interface with the NTS data network and are used for a multitude of data applications. Without access to these facilities on a UNE basis, facilities-based CLECs would either (a) be frozen out of an entire market segment, or (b) be required to purchase such services under an access tariff at uneconomic pricing levels.

In the first instance, not being able to service small, medium and large business customers would simply make being a survivable CLEC impossible. As the Commission is aware, the business market segment is the most profitable portion of any facilities-based CLEC's operations. To a large measure these customers effectively subsidize a CLEC's ability to provide important voice, data and advanced telecommunications capabilities to the residential market segment. Thus, to exclude facilities-based CLECs from competing for an entire market segment would significantly impair a CLEC's ability to compete in all market segments.

At least in the facilities-based markets that NTS serves, as repeatedly noted in section V of these comments, there is simply not an alternative non-ILEC provider for these facilities. Without access to hi-capacity DS-1 and DS-3 end loops, NTS could not provide effective competition to the ILEC. As noted in Section II.E of these comments, intermodal competition is not ready to serve these customers. This leaves traditional wireline services as the only realistic method by which competition take place.

Additionally, today's necessary uses for these facilities do not take into account the need to use these facilities for tomorrow's as yet unforeseen applications. For example, NTS has plans to offer its IP video service to customers using not only ADSL2+, but where the this service cannot be supported due to distance limitations it will be necessary to utilize hi-capacity DS-1 and DS-3 loops for delivery to customers. Thus, eliminating their use as a UNE will frustrate CLECs' attempts to innovate for future applications. No one knows for sure what these

will be, but they are certain to arise and CLECs will be significantly impaired in their implementation without UNE access to these necessary network elements.

Second, just as access to hi-capacity DS-1 and DS-3 ILEC loops is required to service entire market segments, it is also critical to the future course of competition that these facilities be made available on a cost-basis TELRIC. No one can realistically assert that access to these facilities under an ILEC access tariff presents a cost-based alternative to a UNE at TELRIC pricing. Based on NTS's experience, the price differential between access based pricing and TELRIC based pricing represents about an eight to ten fold increase in the cost of these facilities. These costs cannot be passed on to customers because the ILEC will continue to have both the incentive and the wherewithal to price its retail service offerings below its access tariff offerings.

Access to a network element at a price that is so high that it precludes effective competition is to deny access altogether. The effective denial of access through a tariff based pricing scheme constitutes a gross impairment of CLEC's ability to compete. This was not the goal of the 1996 Act and the Commission must act to preserve a facilities-based CLECs ability to access hi-capacity loops at TELRIC pricing. It is the policy of the United States to encourage the development of advanced telecommunications capability to all Americans and hi-capacity end loops are one of the central means available in today's environment to ensure that this can continue to occur.[73]

B. DS-1 and DS-3 Interoffice Transport

Hi-capacity DS-1 and DS-3 loops are also used extensively by facilities-based CLECs for interoffice transport. In those instances where a CLEC cannot economically justify OC-N level service, these UNEs are critical to the growth of facilities-based competition. Without them,

[73] 47 U.S.C. §157

other UNEs, such a collocations, loops, database access, and the like, become impossible to justify.

NTS uses these facilities to connect remote rural markets such as Pampa and Plainview, Texas. It also uses these facilities to connect to remote ILEC end offices such as the Diamond end office in Amarillo, Texas. These facilities are necessary because in remote or rural areas, cost-based hi-capacity interoffice transport facilities are the only economic method of delivering voice, data and advanced communications capability to customers who would otherwise not have a competitive choice for these services. The Commission should strive to implement policies that allow choice and the availability of new services to every American – not just those that live in the most urban areas. Hi-capacity interoffice DS-1 and DS-3 UNEs further this objective very well.

VIII. CONCLUSION

NTS has attempted by these comments to advise the Commission on matters that seem to be "on the table" in this proceeding and which are absolutely necessary to the successful operation of a facilities-based CLEC. Given the short comment period, NTS had to choose which critically necessary UNEs upon which to comment. There are many more that are just as critical, but NTS believes the Commission knows what they are and why they should be retained.

Respectfully submitted,

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Exhibit "A"

Overview of NTS's Facilities-Based CLEC Business

NTS's facilities-based CLEC operations are relatively unique within the industry and, therefore, NTS believes that this outline of NTS's CLEC business model may be helpful to the Commission.

NTS is a facilities-based Competitive Local Exchange Carrier ("CLEC") operating its own facilities in seven markets located in West Texas (the "UNE-L Markets"). These UNE-L Markets range in size from populations of approximately 12,000 to in excess of 200,000.[1] Today, after eight years of hard work, NTS serves in excess of 55,000 local access lines utilizing four Lucent 5ESS® switching centers. We also provide broadband data connectivity utilizing digital subscriber line ("DSL") technology to in excess of 7,000 residential, small and large business customers. Our customer base ranges from the single line residential customer to hundreds of large mutli-line business customers; including numerous cities, school districts, and significant large businesses located in NTS's UNE-L Markets.

NTS is collocated in twenty SBC central offices, at which collocation points NTS interconnects its network to the copper loops of SBC for the provision of both voice and broadband data applications.[2] Within each collocation NTS has placed its own fiber optic terminal equipment, digital loop carriers, DSLAMs, and associated peripheral equipment. Of supreme importance to the NTS model, where there is not an alternative provider for interconnectivity, NTS has leased dark fiber facilities between our collocations using SBC dark

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[1] NTS's smallest UNE-L market is Pampa, Texas and the largest single UNE-L market is Lubbock, Texas.

[2] NTS does not engage in "line splitting" or "line sharing" but, rather, leases the entirety of SBC's copper loop to the customer premise for the provision of voice and data services.

fiber as an unbundled network element in order to create self-healing SONET and/or Ethernet rings as needed to ensure maximum quality of service to our customers.

Outside of our core UNE-L service area, NTS utilizes Total Service Resale ("TSR") or Unbundled Network Element Platform ("UNE-P") to service customers as an initial market entry approach. The particular method used to deliver service depends on a cost-benefit analysis of each customer's needs versus costs incurred by NTS to pay the for the capabilities necessary to offer the service.[3]

Having developed significant market penetrations in our UNE-L markets, NTS is now engaged in a process of developing ways to eliminate its reliance on SBC's copper interoffice and "last mile" facilities. Currently, this effort involves the deployment of fiber-to-the-user in select areas in and around Lubbock, Texas.[4] NTS's efforts in this regard will depend, however, to a very great extent on the local competition rules promulgated by this Commission.[5]

[3] For example, in an area where NTS cannot provision a customer request for service using its own facilities it will utilize the most cost effective method (TSR or UNE-P, but increasingly UNE-P) to provide a competitively priced service.

[4] NTS has deployed an "all-IP", 200-plus channel, switched digital video head end in order to add video services to its fiber-to-the-user customers and, eventually, to offer this video service option to our DSL customers utilizing ADSL2+ and ILEC hi-capacity loop facilities.

[5] NTS has been forced to finance nearly all of its capital requirements with revenues from internally generated cash flows. This result obtains because the turmoil and regulatory uncertainty surrounding the continued availability of access to unbundled network elements at TELRIC pricing has made lenders and investors throughout the country risk-averse to loaning/investing capital to CLECs - even to a cash flow positive CLEC such as NTS. Without access to key network elements at TELRIC pricing, internally generated cash flows will dry up to the point that further expansion of facilities and service innovations will be impossible to achieve.

Exhibit "B"

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